

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAYMOND SCHULMAN,

Plaintiff,

-against-

Sergeant GARY CALHOUN, Shield No. 622;
Police Officer KELVIN PERALTA, Shield No.
6980; Police Officer KHAMIL PAC, Shield No.
28872; Police Officer SAMUEL CAREY, Shield
No. 23728; and JOHN and JANE DOE 1 through
10, individually and in their official capacities (the
names John and Jane Doe being fictitious, as the
true names are presently unknown),

Defendants.
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**FIRST AMENDED
COMPLAINT**

15 CV 1736 (MKB) (VMS)

Jury Trial Demanded

NATURE OF THE ACTION

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

JURY DEMAND

5. Plaintiff demands a trial by jury in this action.

PARTIES

6. Plaintiff Raymond Schulman (“plaintiff” or “Mr. Schulman”) is a resident of the state of Arkansas.

7. Defendant Sergeant Gary Calhoun, Shield No. 622 (“Calhoun”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Calhoun is sued in his individual and official capacities.

8. Defendant Police Officer Kelvin Peralta, Shield No. 6980 (“Peralta”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Peralta is sued in his individual and official capacities.

9. Defendant Police Officer Khamil Pac, Shield No. 28872 (“Pac”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Pac is sued in his individual and official capacities.

10. Defendant Police Officer Samuel Carey, Shield No. 23728 (“Carey”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Carey is sued in his individual and official capacities.

11. At all times relevant defendants John and Jane Doe 1 through 10 were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not know the real names and shield numbers of defendants John and Jane Doe 1 through 10.

12. At all times relevant herein, defendants John and Jane Doe 1 through 10 were acting as agents, servants and employees of the City of New York and the NYPD. Defendants John and Jane Doe 1 through 10 are sued in their individual and official capacities.

13. At all times relevant herein, all individual defendants were acting under color of state law.

STATEMENT OF FACTS

14. Mr. Schulman is an honorably discharged military veteran.

15. At approximately 12:00 p.m. on July 17, 2014, Mr. Schulman was lawfully present in the vicinity of Van Sinderen Avenue in Brooklyn, New York.

16. Without reasonable suspicion or probable cause to believe he had

committed any crime or offense, defendants unlawfully stopped Mr. Schulman and subjected him to multiple invasive searches on the street.

17. No contraband was recovered from Mr. Schulman.

18. Even though they lacked arguable probable cause to do so, the defendant officers falsely arrested Mr. Schulman, handcuffed him and took him to the 75th Precinct.

19. At the precinct the officers falsely informed employees of the Kings County District Attorney's Office that they had observed plaintiff in unlawful possession of a controlled substance and prepared false paperwork to that effect.

20. At no point did the officers observe plaintiff unlawfully possess a controlled substance or commit any other crime or offense.

21. After spending over seven in custody, Mr. Schulman was issued a Desk Appearance Ticket and released.

22. On January 13, 2015, after several mandatory court appearances, all criminal charges were dismissed.

23. Plaintiff suffered damage as a result of defendants' actions. Plaintiff was deprived of his liberty, suffered emotional distress, mental anguish, fear, pain, anxiety, embarrassment, humiliation, and damage to his reputation.

FIRST CLAIM
Unlawful Stop and Search

24. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

25. Defendants violated the Fourth and Fourteenth Amendments because they stopped and searched plaintiff without reasonable suspicion.

26. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages herein before alleged.

SECOND CLAIM
False Arrest

27. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

28. Defendants violated the Fourth and Fourteenth Amendments because they arrested plaintiff without probable cause.

29. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

THIRD CLAIM
Malicious Prosecution

30. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

31. By their conduct, as described herein, and acting under color of state law, defendants are liable to plaintiff under 42 U.S.C. § 1983 for the violation of his constitutional right to be free from malicious prosecution under the Fourth and Fourteenth Amendments to the United States Constitution.

32. Defendants' unlawful actions were done willfully, knowingly, with malice and with the specific intent to deprive plaintiff of his constitutional rights. The prosecution by defendants of plaintiff constituted malicious prosecution in that there was no basis for the plaintiff's arrest, yet defendants continued with the prosecution, which was resolved in plaintiff's favor.

33. As a direct and proximate result of the misconduct and abuse of authority stated above, plaintiff sustained the damages alleged herein.

FOURTH CLAIM
Denial of Constitutional Right to Fair Trial

34. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

35. The individual defendants created false evidence against plaintiff.

36. The individual defendants forwarded false evidence to prosecutors in the Kings County District Attorney's office.

37. In creating false evidence against plaintiff, and in forwarding false information to prosecutors, the individual defendants violated plaintiff's right to a fair trial under the Due Process Clause of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

38. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

FIFTH CLAIM
Failure to Intervene

39. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

40. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

41. Accordingly, the defendants who failed to intervene violated the Fourth, Fifth, Sixth and Fourteenth Amendments.

42. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests judgment against defendants as follows:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against the individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

Dated: September 18, 2015
New York, New York

HARVIS & FETT LLP



Gabriel P. Harvis
305 Broadway, 14th Floor
New York, New York 10007
(212) 323-6880
gharvis@civilrights.nyc

Attorneys for plaintiff